



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0135/P6
CMH:jld:ch

P7

FRIDAY
5:00 P.M.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

repeal car

1 AN ACT *to repeal* 854.03 (7), 854.06 (1) (b), 854.13 (7) (b), 854.13 (11) (title),
2 854.14 (1), 854.21 (1) (a) 1., 2. and 3., 861.04 (2), 861.21 (3), 861.31 (1c), 861.33
3 (1) (c) and 861.35 (1c); *to renumber* 701.06 (6), 701.115 (1), 766.62 (4), 853.32
4 (1), 854.13 (2) (a), 854.15 (5) (intro.) and 854.15 (5) (a), (b), (c), (d) and (e); *to*
5 *renumber and amend* 701.24, 701.26, 705.04 (2), 766.31 (3), 766.31 (6),
6 852.01 (1) (a) 2., 853.03 (2), 853.11 (2), 853.18 (1), 853.32 (2) (b), 854.01, 854.03
7 (5), 854.05 (5), 854.06 (4) (a), 854.06 (4) (b), 854.08 (5), 854.08 (6) (a) 1., 854.13
8 (10), 854.13 (11) (a), 854.13 (11) (b), 854.15 (1) (e), 854.15 (5) (f), 854.20 (1),
9 854.20 (2) (intro.), 854.20 (2) (a), 854.20 (2) (b), 854.20 (3), 854.20 (4), 854.21 (1)
10 (a) (intro.), 857.03 (2) and 861.01 (3); *to consolidate, renumber and amend*
11 854.08 (6) (a) (intro.) and 2.; *to amend* 30.541 (3) (d) 2. d., 40.02 (8) (a) 2., 71.05
12 (6) (a) 16., 71.05 (6) (b) 12., 71.05 (12) (d), 101.9211 (4) (b) 4., 342.17 (4) (b) 4.,
13 700.11 (1), 700.13 (2), 701.06 (7), 701.06 (8), 701.115 (2), 701.115 (3), 701.20 (5)
14 (d), 701.24 (title), 701.26 (title), 702.03 (1), 702.08, 705.06 (1) (c), 705.06 (2),
15 705.21 (12) (a), 705.27, 766.61 (7), 766.62 (2), 766.62 (5) (intro.), 767.266 (1) (b),

851.21 (1) (b), 851.31, 851.50, 852.01 (1) (b), 852.05 (title), 852.05 (1) (intro.),
852.05 (2), 852.05 (3), 852.12, 853.11 (3), 853.11 (6) (c), 853.11 (6) (d), 853.32 (2)
(a), 854.03 (2) (b), 854.04 (1) (a), 854.04 (3) (a), 854.04 (5) (intro.), 854.04 (6),
854.07 (3), 854.07 (4), 854.09 (3), 854.11 (4), 854.13 (title), 854.13 (2) (h), 854.13
(7) (title), 854.13 (7) (a), 854.13 (8), 854.13 (9), 854.13 (12) (b), 854.14 (5) (a),
854.14 (5) (b), 854.14 (5) (c), 854.17, 854.18 (1) (a) (intro.), 854.18 (3), 854.20 (5),
854.21 (1) (b), 854.21 (7), 854.22 (4), 856.05 (5), 856.15 (1), 856.17, 859.01,
subchapter II (title) of chapter 861 [precedes 861.018], 861.02 (title), 861.02 (4),
861.02 (6), 861.02 (7) (b), 861.05 (1) (c), 861.05 (2) (title), 861.06 (title), 861.06
(2) (title), 861.06 (2) (b) (intro.), 861.06 (2) (b) 4. a., 861.07 (2) (intro.), 861.10 (1),
861.10 (2), 861.11 (2) (a) (intro.), 861.11 (2) (b), 861.11 (5) (b), 861.17 (3), 861.21
(1) (a), 861.21 (2), 861.21 (4), 861.21 (5), 861.31 (1m), 861.31 (2), 861.31 (4)
(intro.), 861.31 (4) (a), 861.33 (title), 861.33 (1) (a) (intro.), 861.33 (1) (b), 861.33
(2), 861.33 (3), 861.33 (4), 861.35 (title), 861.35 (1m) (intro.), 861.35 (1m) (a),
861.35 (1m) (b), 861.35 (1m) (c), 861.35 (2), 861.35 (3) (a), 861.35 (4) (intro.),
861.35 (4) (a), 863.08, 863.15, 865.07 (1) (d), 867.03 (1g) (intro.), 867.03 (1g) (b)
and 867.035 (1) (a) 4.; **to repeal and recreate** 701.19 (10), 853.04 (3), 854.08
(5) (title), 854.13 (10) (title), 856.16, 861.02 (8), 863.16 and 863.19; **to create**
40.18, 700.27, 701.06 (6) (b), (c) and (d), 701.115 (1) (a), 701.24 (2), 701.26 (1) (d),
701.26 (2), 705.04 (2) (a), 705.04 (2) (d), 705.04 (2) (e), 705.04 (2) (f), 705.21 (12)
(am), 766.31 (1) (title), 766.31 (2) (title), 766.31 (3) (b), 766.31 (4) (title), 766.31
(5) (title), 766.31 (6) (title), 766.31 (6) (b), 766.31 (7) (title), 766.31 (7p) (title),
766.31 (8) (title), 766.31 (9) (title), 766.31 (10) (title), 766.62 (4) (b), 766.62 (4)
(c), 851.055 (1m), 852.01 (1) (a) 2. b., 853.03 (2) (bm), 853.11 (2m), 853.18 (1) (a),
(b) and (c), 853.32 (1) (bm), 853.32 (2) (am), 854.01 (1), 854.03 (5) (am) 7., 854.03

(5) (am) 8., 854.03 (5) (am) 9., 854.03 (5) (bm), 854.035, 854.06 (4) (a) 1., 854.08 (5) (a), 854.08 (5) (d), 854.115, 854.12, 854.13 (2) (a) 1., 854.13 (2) (gm), 854.13 (2) (i), 854.13 (7) (bm) and (c), 854.13 (10) (b), 854.14 (3m), 854.20 (2) (am) 2. b. and c., 857.03 (2m), 859.02 (2m), 861.01 (3m), 861.01 (4), 861.01 (5), 861.04 (2m), 861.05 (1) (e), 861.05 (2m), 861.06 (6), 880.61 (11m) and 880.675 (1m) of the statutes; and **to affect** 1997 Wisconsin Act 188, section 233 (1); **relating to:** miscellaneous remedial modifications to the Wisconsin Probate Code.

Analysis by the Legislative Reference Bureau

This bill makes remedial modifications to current law and primarily corrects technical errors and clarifies various provisions in 1997 Wisconsin Act 188, which modernized the Wisconsin Probate Code. This bill continues the process of extending various interpretative rules from probate to nonprobate assets and of allowing extrinsic evidence to be used when interpreting the intent of the transferor, especially with respect to rules of construction. This bill also creates additional protections for a decedent spouse who is murdered by the surviving spouse.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 30.541 (3) (d) 2. d. of the statutes is amended to read:

30.541 (3) (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse proceeds under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~ property subject to administration in the state, including boats transferred under this subdivision, does not exceed ~~\$20,000~~ \$50,000.

SECTION 2. 40.02 (8) (a) 2. of the statutes is amended to read:

40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all beneficiaries so designated die before filing with the department an application for any death benefit payable, the person determined in the following sequence: group 1, widow or widower; group 2, ~~children if at least one child survives the participant,~~

1 ~~employee or annuitant, in which event the share of any deceased child shall be~~
2 ~~payable to the surviving spouse of the child or to the surviving children of the child~~
3 ~~if there is no spouse, or otherwise to the other eligible children in this group; group~~
4 ~~3, grandchild; group 4, parent; group 5, brother and sister~~ issue, as defined in s.
5 851.13, per stirpes, as described in s. 854.04 (1). No payment may be made to a person
6 included in any group 2 if there is a living person in any preceding group 1.

7 **SECTION 3.** 40.18 of the statutes is created to read:

8 **40.18 Applicability of other statutes. (1) MARITAL PROPERTY RIGHTS.**
9 Chapter 766 applies to ownership rights and remedies of a spouse in benefits
10 provided under this chapter.

11 **(2) TRANSFERS AT DEATH.** Chapter 854 applies to transfers at death under this
12 chapter.

13 **(3) DEFERRED MARITAL PROPERTY ELECTION.** Sections 861.018 to 861.10 apply to
14 the election rights of a surviving spouse in benefits provided under this chapter.

15 **SECTION 4.** 71.05 (6) (a) 16. of the statutes is amended to read:

16 71.05 (6) (a) 16. Any amount recognized as a loss under section 1001 (c) of the
17 ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee
18 exchange their interests in marital property under s. 857.03 (2) 766.31 (3) (b).

19 **SECTION 5.** 71.05 (6) (b) 12. of the statutes is amended to read:

20 71.05 (6) (b) 12. Any amount recognized as a gain under section 1001 (c) of the
21 ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee
22 exchange their interests in marital property under s. 857.03 (2) 766.31 (3) (b).

23 **SECTION 6.** 71.05 (12) (d) of the statutes is amended to read:

24 71.05 (12) (d) Property exchanged under s. 857.03 (2) 766.31 (3) (b) shall be
25 treated as if acquired by gift for the determination of basis.

1 **SECTION 7.** 101.9211 (4) (b) 4. of the statutes is amended to read:

2 101.9211 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse
3 is proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely-owned~~
4 property subject to administration in the state, including the manufactured homes
5 transferred under this paragraph, does not exceed ~~\$10,000~~ \$50,000.

6 **SECTION 8.** 342.17 (4) (b) 4. of the statutes is amended to read:

7 342.17 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse is
8 proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely-owned~~
9 property subject to administration in the state, including the vehicles transferred
10 under this paragraph, does not exceed ~~\$20,000~~ \$50,000.

11 **SECTION 9.** 700.11 (1) of the statutes is amended to read:

12 700.11 (1) If a statute, inter vivos governing instrument, as defined in s. 700.27
13 (1) (c), or governing instrument, as defined in s. 854.01 (2), specifies that property
14 is to be distributed to, or a future interest is to be created in, a designated individual's
15 "heirs", "heirs at law", "next of kin", "relatives" ~~or~~ "family," or a term that has
16 a similar meaning, or if a class gift in favor of "descendants", "issue," or "heirs of the
17 body" does not specify the manner in which the property is to be distributed among
18 the class members, the property is distributed according to s. 854.22.

19 **SECTION 10.** 700.13 (2) of the statutes is amended to read:

20 700.13 (2) ~~Unless the instrument of transfer manifests a contrary intent, The~~
21 effect of a renunciation or release of an interest for life or years accelerates
22 succeeding interests is as provided in ss. 700.27 (8) and 854.13 (10).

23 **SECTION 11.** 700.27 of the statutes is created to read:

24 **700.27 Disclaimer of transfers during life. (1) DEFINITIONS.** In this section:

1 (a) "Beneficiary under an inter vivos governing instrument" includes any
2 person who receives or might receive property under the terms or legal effect of an
3 inter vivos governing instrument.

4 (b) "Extrinsic evidence" has the meaning given in s. 854.01 (1).

5 (c) "Inter vivos governing instrument":
6

1. Means a gratuitous deed, inter vivos trust instrument, insurance policy,
7 contract, inter vivos instrument that creates or exercises a power of appointment, or
8 any other dispositive, appointive, or nominative instrument that transfers property
9 other than a governing instrument as defined in s. 854.01 (2).

10 2. Includes an inter vivos gift that is not subject to a written instrument.

11 (d) "Power" has the meaning given in s. 702.01 (4).

12 (2) RIGHT TO DISCLAIM. (a) *In general.* 1. In this paragraph, "person" includes
13 a person who is unborn or whose identity is unascertained.

14 2. A person who is a recipient of property or beneficiary under an inter vivos
15 governing instrument, donee of a power created by an inter vivos governing
16 instrument, appointee under a power exercised by an inter vivos governing
17 instrument, taker in default under a power created by an inter vivos governing
18 instrument, or person succeeding to disclaimed property created by an inter vivos
19 governing instrument may disclaim any property, including contingent or future
20 interests or the right to receive discretionary distributions, by delivering a written
21 instrument of disclaimer under this section.

22 (b) *Partial disclaimer.* Property transferred under an inter vivos governing
23 instrument may be disclaimed in whole or in part, except that a partial disclaimer
24 of property passing by an inter vivos governing instrument or by the exercise of a

1 power may not be made if partial disclaimer is expressly prohibited by the inter vivos
2 governing instrument or by the instrument exercising the power.

3 (c) *Spendthrift provision.* The right to disclaim exists notwithstanding any
4 limitation on the interest of the disclaimant in the nature of a spendthrift provision
5 or similar restriction.

6 (d) *Disclaimer by a guardian or conservator.* A guardian of the estate or a
7 conservator appointed under ch. 880 may disclaim on behalf of his or her ward, with
8 court approval, if the ward is entitled to disclaim under this section.

9 (e) *Disclaimer by an agent under power of attorney.* An agent under a power
10 of attorney may disclaim on behalf of the person who granted the power of attorney
11 if all of the following apply:

12 1. The person who granted the power of attorney is entitled to disclaim under
13 this section.

14 2. The power of attorney specifically grants the power to disclaim.

15 (f) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property
16 under an inter vivos governing instrument may disclaim that property on behalf of
17 the trust if the trust authorizes disclaimer by the trustee. If the trust does not
18 authorize disclaimer by the trustee, the trustee's power to disclaim is subject to the
19 approval of the court.

20 (g) *After death.* A person's right to disclaim survives the person's death and
21 may be exercised by the person's personal representative or special administrator
22 upon receiving approval from the court having jurisdiction of the person's estate after
23 hearing upon notice to all persons interested in the disclaimed property, if the
24 personal representative or special administrator has not taken any action that would
25 bar the right to disclaim under sub. (9).

1 (h) *Disclaimers of transfers at death.* A person who is a recipient of property
2 under a governing instrument, as defined in s. 854.01 (2), may disclaim the property
3 as provided in s. 854.13.

4 (3) INSTRUMENT OF DISCLAIMER. The instrument of disclaimer must meet the
5 provisions of subs. (4) and (5) and s. 854.13 (3) (a) to (c).

6 (4) TIME FOR EFFECTIVE DISCLAIMER. (a) *Present interest.* An instrument
7 disclaiming a present interest shall be executed and delivered not later than 9
8 months after the effective date of the transfer under the inter vivos governing
9 instrument. For cause shown, the period may be extended by a court of competent
10 jurisdiction, either within or after the 9-month period, for such additional time as
11 the court considers just.

12 (b) *Future interest.* An instrument disclaiming a future interest shall be
13 executed and delivered not later than 9 months after the event that determines that
14 the taker of the property is finally ascertained and his or her interest indefeasibly
15 fixed. For cause shown, the period may be extended by a court of competent
16 jurisdiction, either within or after the 9-month period, for such additional time as
17 the court considers just.

18 (c) *Future right to income or profits.* Notwithstanding pars. (a) and (b), an
19 instrument disclaiming the future right to receive mandatory distributions of
20 income or profits from any source may be executed and delivered at any time.

21 (d) *Persons under 21.* Notwithstanding pars. (a) and (b), a person under 21
22 years of age may disclaim at any time not later than 9 months after the date on which
23 the person attains 21 years of age.

24 (e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person
25 whose interest in property arises by disclaimer or by default of exercise of a power

1 created by an inter vivos governing instrument may disclaim at any time not later
2 than 9 months after the day on which the prior instrument of disclaimer is delivered,
3 or the date on which the donee's power lapses.

4 (5) DELIVERY AND FILING OF DISCLAIMER. (a) *Delivery*. In addition to any
5 requirements imposed by the inter vivos governing instrument, the instrument of
6 disclaimer is effective only if, within the time specified under sub. (4), it is delivered
7 to and received by any of the following:

- 8 1. The transferor of the property disclaimed.
- 9 2. The transferor's legal representative.
- 10 3. The holder of legal title to the property.

11 (b) *Delivery to trustee*. If the trustee of any trust to which the interest or power
12 relates does not receive the instrument of disclaimer under par. (a), a copy shall also
13 be delivered to the trustee. Failure to deliver a copy of the instrument of disclaimer
14 to the trustee within the time specified under sub. (4) does not affect the validity of
15 any disclaimer.

16 (c) *Recording*. If real property or an interest in real property is disclaimed, a
17 copy of the instrument of disclaimer may be recorded in the office of the register of
18 deeds of the county in which the real estate is situated.

19 (6) PROPERTY NOT VESTED. The property disclaimed under this section shall be
20 considered not to have been vested in, created in, or transferred to the disclaimant.

21 (7) DEVOLUTION. (a) *In general*. Subject to sub. (8), unless the inter vivos
22 governing instrument provides otherwise, either expressly or as construed from
23 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died
24 before the effective date of the transfer under the inter vivos governing instrument.
25 If the disclaimed interest is a remainder contingent on surviving to the time of

1 distribution, the disclaimed interest passes as if the disclaimant had died
2 immediately before the time for distribution. If the disclaimant is an appointee
3 under a power exercised by an inter vivos governing instrument, the disclaimed
4 property devolves as if the disclaimant had died before the effective date of the
5 exercise of the power. If the disclaimant is a taker in default under a power created
6 by an inter vivos governing instrument, the disclaimed property devolves as if the
7 disclaimant had predeceased the donee of the power.

8 (b) *Devolution to issue of the disclaimants.* Unless the inter vivos governing
9 instrument provides otherwise, either expressly or as construed from extrinsic
10 evidence, if, by law or under the inter vivos governing instrument, the issue of the
11 disclaimant would share in the disclaimed interest by any method of representation
12 had the disclaimant died before the time the disclaimed interest would have taken
13 effect in possession or enjoyment, the disclaimed interest passes only to the issue of
14 the disclaimant who survive when the disclaimed interest takes effect in possession
15 or enjoyment.

16 (c) *Disclaimer of a devisable future interest.* 1. In this paragraph, “devisable
17 future interest” is a future interest that can be passed under the will of the person
18 who holds the future interest.

19 2. If the disclaimed interest is a devisable future interest under the law
20 governing the transfer, then the disclaimed interest devolves as if it were a
21 nondevisable future interest.

22 (8) ACCELERATION OF SUBSEQUENT INTERESTS WHEN PRECEDING INTEREST IS
23 DISCLAIMED. (a) *Subsequent interest not held by disclaimant.* Unless the inter vivos
24 governing instrument provides otherwise, either expressly or as construed from
25 extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest

1 not held by the disclaimant and limited to take effect in possession or enjoyment after
2 the termination of the interest that is disclaimed accelerates to take effect as if the
3 disclaimant had died immediately before the time when the disclaimed interest
4 would have taken effect in possession or enjoyment or, if the disclaimant is an
5 appointee under a power exercised by a power of appointment, as if the disclaimant
6 had died before the effective date of the exercise of the power.

7 (b) *Subsequent interest held by disclaimant.* Unless the inter vivos governing
8 instrument provides otherwise, either expressly or as construed from extrinsic
9 evidence, upon the disclaimer of a preceding interest, a subsequent interest held by
10 the disclaimant does not accelerate.

11 (9) BAR. Actions that bar disclaimer are as provided in s. 854.13 (11g).

12 (10) EFFECT OF DISCLAIMER OR WAIVER. The effect of the disclaimer on the
13 disclaimant and any successors in interest is as provided in s. 854.13 (11p).

14 (11) NONEXCLUSIVENESS OF REMEDY. (a) This section does not affect the right of
15 a person to waive, release, disclaim, or renounce property under any other statute
16 or the common law, or as provided in the creating instrument.

17 (b) Any disclaimer that meets the requirements of section 2518 of the Internal
18 Revenue Code, or the requirements of any other federal law relating to disclaimers,
19 constitutes an effective disclaimer under this section or s. 854.13.

20 (12) CONSTRUCTION OF EFFECTIVE DATE. In this section, the effective date of a
21 transfer under an inter vivos governing instrument is the date on which the transfer
22 is a completed gift for federal gift tax purposes.

23 **SECTION 12.** 701.06 (6) of the statutes is renumbered 701.06 (6) (a).

24 **SECTION 13.** 701.06 (6) (b), (c) and (d) of the statutes are created to read:

1 701.06 (6) (b) A beneficiary of a trust may not be considered a settlor solely
2 because of a lapse, waiver, or release of any of the following:

3 1. A power described under par. (c).

4 2. The beneficiary's right to withdraw part of the trust property, to the extent
5 that the value of the property affected by the lapse, waiver, or release in any year does
6 not exceed the greater of the amount in:

7 a. Section 2041 (b) (2) or 2514 (e), Internal Revenue Code of 1986.

8 b. Section 2503 (b), Internal Revenue Code of 1986.

9 (c) A beneficiary of a trust is not a settlor, has not made a voluntary or
10 involuntary transfer of the beneficiary's interest in the trust, or does not have the
11 power to make a voluntary or involuntary transfer of the beneficiary's interest in the
12 trust solely because the beneficiary holds or exercises, in any capacity, any of the
13 following:

14 1. A presently exercisable power to consume, invade, appropriate, or distribute
15 property to or for the benefit of the beneficiary if the power is any of the following:

16 a. Exercisable only on consent of another person holding an interest adverse
17 to the beneficiary's interest.

18 b. Limited by an ascertainable standard, such as health, education, support,
19 or maintenance of the beneficiary.

20 2. A presently exercisable power to appoint any property of the trust to or for
21 the benefit of a person other than the beneficiary, a creditor of the beneficiary, the
22 beneficiary's estate, or a creditor of the beneficiary's estate.

23 3. A testamentary power of appointment.

24 4. A presently exercisable right described in par. (b) 2.

1 (d) A beneficiary of a trust is not a settlor solely because the beneficiary is
2 entitled to nondiscretionary distributions from the trust.

3 **SECTION 14.** 701.06 (7) of the statutes is amended to read:

4 701.06 (7) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by
5 a court under sub. (4), (5) or (6) (a) is subject to modification upon application of an
6 interested person.

7 **SECTION 15.** 701.06 (8) of the statutes is amended to read:

8 701.06 (8) EXEMPT ASSETS. Assets of a trust, to the extent they are exempt from
9 claims of creditors under other statutes, shall not be subject to sub. (4), (5), or (6) (a).

10 **SECTION 16.** 701.115 (1) of the statutes is renumbered 701.115 (1) (b).

11 **SECTION 17.** 701.115 (1) (a) of the statutes is created to read:

12 701.115 (1) (a) In par. (b), “revocable trust” means a trust that the grantor, at
13 the time of death, was alone empowered to change or revoke, by law or under the
14 instrument creating the trust, regardless of whether the grantor then had the
15 capacity to exercise the power.

16 **SECTION 18.** 701.115 (2) of the statutes is amended to read:

17 701.115 (2) Survivorship under sub. (1) (b) is governed by s. 854.03.

18 **SECTION 19.** 701.115 (3) of the statutes is amended to read:

19 701.115 (3) The rights of the issue of a predeceasing beneficiary under sub. (1)
20 (b) are governed by s. 854.06.

21 **SECTION 20.** 701.19 (10) of the statutes is repealed and recreated to read:

22 701.19 (10) RESTRICTION ON EXERCISE OF POWERS. (a) Except as provided in par.
23 (c), a person may not exercise any of the following powers conferred upon him or her
24 in his or her capacity as trustee:

1 1. The power to make discretionary distributions of trust principal or income
2 if the distributions are to himself or herself or for the discharge of his or her legal
3 obligations.

4 2. The power to make discretionary allocations of receipts or expenses as
5 between principal and income if the allocations are in his or her favor.

6 (b) If a power under par. (a) is conferred upon more than one person as trustee,
7 a person who is not disqualified to act under par. (a) may exercise the power for the
8 benefit of the person who is disqualified to act, unless the creating instrument
9 expressly provides otherwise. A special trustee appointed by a court may exercise
10 a power under par. (a) for the benefit of the disqualified person if no other trustee is
11 qualified to exercise the power.

12 (c) Paragraph (a) does not apply if any of the following applies:

13 1. The person is also the settlor of the trust, and the trust may be revoked or
14 amended by the settlor.

15 2. The terms of the creating instrument specifically limit the scope of the power
16 to expenditures and distributions of income or principal on the basis of an
17 ascertainable standard relating to the person's health, maintenance, support, or
18 education such that the person would not be subject to tax under section 2041 or 2514
19 of the Internal Revenue Code as a result of having or exercising the power.

20 3. The person is the spouse, widow, or widower of the settlor of the trust, and
21 a marital deduction has been allowed for federal gift or estate tax purposes with
22 respect to the trust property that is subject to the power.

23 4. The creating instrument negates the application of par. (a) with respect to
24 the power or indicates that provisions that are similar to par. (a) do not apply.

25 (d) Section 701.24 ~~(b)~~ governs the applicability of this statute.

2005 - 2006 Legislature

- 15 -

NOTE: Please read s. 701.20 (5) (d), as affected by Act 10, to see how you would like to treat it.

SECTION 21. 701.20 (5) (d) of the statutes is amended to read:

701.20 (5) (d) A legatee, including a trustee, of a specific amount of money not determined by a pecuniary formula shall not be paid any part of the income of the estate but shall receive interest on any unpaid portion of the legacy for the period commencing one year after decedent's death at the legal rate set forth in s. 138.04. For purposes of this paragraph, the deferred marital property elective share amount elected by a surviving spouse under s. 861.02 (1) is a bequest of a specific amount of money not determined by a pecuniary formula.

SECTION 22. 701.24 (title) of the statutes is amended to read:

701.24 (title) Applicability of ss. 701.01 to 701.23.

SECTION 23. 701.24 of the statutes is renumbered 701.24 (1) and amended to read:

701.24 (1) Except as otherwise provided in sub. (2) and s. 701.19 (9) (a) and (10), ss. 701.01 to 701.23 are applicable to a trust existing on July 1, 1971, as well as a trust created after such date, and shall govern trustees acting under such trusts. If application of any provision of ss. 701.01 to 701.23 to a trust in existence on August 1, 1971, is unconstitutional, it shall not affect application of the provision to a trust created after that date.

SECTION 24. 701.24 (2) of the statutes is created to read:

701.24 (2) Sections 701.06 (6) (b), (c), and (d) and 701.19 (10) are applicable to a trust existing on the effective date of this subsection [revisor inserts date], as well as a trust created after that date, and shall govern trustees acting under such trusts. If application of any provision of s. 701.06 (6) (b), (c), or (d) or 701.19 (10) to a trust in existence on the effective date of this subsection [revisor inserts date],

1 is unconstitutional, it shall not affect application of the provision to a trust created
2 after that date.

3 **SECTION 25.** 701.26 (title) of the statutes is amended to read:

4 **701.26 (title) Disclaimers of nonprobate transfers at death.**

5 **SECTION 26.** 701.26 of the statutes is renumbered 701.26 (1) and amended to
6 read:

7 701.26 (1) A ~~person~~ recipient may disclaim, under s. 854.13, any of the
8 following:

9 (a) ~~An~~ All or part of an interest in a joint tenancy, upon the death of another
10 joint tenant.

11 (b) ~~An~~ All or part of an interest in survivorship marital property, upon the death
12 of the other spouse.

13 (c) ~~An~~ All or part of an interest that is created by a nontestamentary instrument
14 and transferred at death, upon the death that causes the transfer.

15 **SECTION 27.** 701.26 (1) (d) of the statutes is created to read:

16 701.26 (1) (d) All or part of any other interest transferred under a governing
17 instrument, as defined in s. 854.01 (2).

18 **SECTION 28.** 701.26 (2) of the statutes is created to read:

19 701.26 (2) A recipient may disclaim, under s. 700.27, all or part of any interest
20 transferred under an inter vivos governing instrument, as defined in s. 700.27 (1) (c).

21 **SECTION 29.** 702.03 (1) of the statutes is amended to read:

22 702.03 (1) Unless the person who executed it had a contrary intention ~~is found~~,
23 if a governing instrument, as defined in s. 854.01, ~~creating (2), or an inter vivos~~
24 governing instrument, as defined in s. 700.27 (1) (c), creates a power of appointment
25 that expressly requires that the power be exercised by any type of reference to the

1 power or its source, ~~it is presumed that~~ the donor's intention in requiring the
2 reference was is presumed to be to prevent an inadvertent exercise of the power.
3 Extrinsic evidence, as defined in s. 854.01 (1), may be used to ~~show contrary~~ construe
4 the intent.

5 **SECTION 30.** 702.08 of the statutes is amended to read:

6 **702.08 Disclaimer of powers.** The donee of any power may disclaim all or
7 part of the power as provided under s. 700.27 or 854.13.

8 **SECTION 31.** 705.04 (2) of the statutes is renumbered 705.04 (2) (intro.) and
9 amended to read:

10 705.04 (2) (intro.) If the account is a P.O.D. account, on the death of the original
11 payee or the survivor of 2 or more original payees, ~~any sums remaining on deposit~~
12 ~~belong to the P.O.D. beneficiaries if surviving, or to the survivor of them if one or more~~
13 ~~die before the original payee. Payment may be made to a minor P.O.D. beneficiary,~~
14 ~~however, only in accordance with a procedure approved in ch. 880. all of the following~~
15 apply:

16 (b) If there are 2 or more P.O.D. beneficiaries and they all survive, they shall
17 ~~be~~ are entitled to payment of the sums on deposit in accordance with such any written
18 instructions as ~~may have been~~ that the owner filed with the financial institution, ~~and~~
19 ~~or, if none~~ the owner left no written instructions, to payment in equal shares. There

20 (c) If 2 or more persons succeed to ownership of the account, there is no further
21 ~~right of survivorship in the event of the death of one of 2 or more P.O.D. beneficiaries~~
22 ~~after their entitlement to payment has matured~~ unless the terms of the account
23 expressly provide for survivorship or for the account's continuance as a joint account.

24 **SECTION 32.** 705.04 (2) (a) of the statutes is created to read:

1 705.04 (2) (a) If there is one P.O.D. beneficiary and he or she survives, he or she
2 is entitled to payment of all sums remaining on deposit.

3 **SECTION 33.** 705.04 (2) (d) of the statutes is created to read:

4 705.04 (2) (d) Subject to the rights of financial institutions under s. 705.06 (1)
5 (c), if any P.O.D. beneficiary predeceases the original payee or the survivor of 2 or
6 more original payees, the amount to which the predeceased P.O.D. beneficiary would
7 have been entitled passes to any of his or her issue who would take under s. 854.06
8 (3).

9 **SECTION 34.** 705.04 (2) (e) of the statutes is created to read:

10 705.04 (2) (e) If no P.O.D. beneficiary or predeceased P.O.D. beneficiary's issue
11 who would take under s. 854.06 (3) survives the death of all owners, the account
12 belongs to the estate of the deceased sole owner or the estate of the last to die of
13 multiple owners.

14 **SECTION 35.** 705.04 (2) (f) of the statutes is created to read:

15 705.04 (2) (f) Payment may be made to a minor P.O.D. beneficiary only in
16 accordance with a procedure approved under ch. 880.

17 **SECTION 36.** 705.06 (1) (c) of the statutes is amended to read:

18 705.06 (1) (c) Any sums in a P.O.D. account may be paid, on request, to the
19 P.O.D. beneficiary upon presentation to the financial institution of proof of death
20 showing that the P.O.D. beneficiary survived all persons named as original payees
21 of the account. If more than one P.O.D. beneficiary is named and at least one of them
22 is predeceased, sums in the account may be paid to the surviving P.O.D. beneficiary
23 or beneficiaries upon presentation of proof of death of the other beneficiary, without
24 regard to claims by the issue of a predeceased beneficiary under s. 705.04 (2) (d). If
25 none of the named beneficiaries survive, the sums in the account may be paid to the

1 estate of the deceased sole owner or the estate of the owner who was the last to die
2 of multiple owners, without regard to claims by the issue of a predeceased beneficiary
3 under s. 705.04 (2) (d).

4 **SECTION 37.** 705.06 (2) of the statutes is amended to read:

5 705.06 (2) Payment made under this subchapter discharges the financial
6 institution from all claims for amounts so withdrawn. If the institution has reason
7 to believe that a dispute exists as to the rights of the parties to an account or their
8 successors it may, but shall not be required to, refuse to pay funds in the account to
9 any persons pending instructions from a court, or it may pay the proceeds to a court.
10 An institution may but need not recognize the authority of an agent, other than one
11 with continuing authority under s. 705.05 (3), until it knows of the fact of death or
12 adjudication of incompetence of all parties appointing such agent and has reasonable
13 opportunity to act.

14 (3) The protection provided by this section shall have no bearing on the rights
15 of parties or their successors in disputes concerning the beneficial ownership of funds
16 in or withdrawn from an account.

17 **SECTION 38.** 705.21 (12) (a) of the statutes is amended to read:

18 705.21 (12) (a) A reinvestment account associated with a security, a securities
19 account with a broker, a cash balance in a brokerage account, cash, cash equivalents,
20 interest, earnings, or dividends earned or declared on a security in an account, a
21 reinvestment account, or a brokerage account, whether or not credited to the account
22 before the owner's death.

23 **SECTION 39.** 705.21 (12) (am) of the statutes is created to read:

24 705.21 (12) (am) An investment agency, investment management, or custody
25 account with a trust company or a trust division of a bank with trust powers,

1 including the securities in the account, a cash balance in the account, and cash, cash
2 equivalents, interest, earnings, or dividends earned or declared on a security in the
3 account, whether or not credited to the account before the owner's death.

4 **SECTION 40.** 705.27 of the statutes is amended to read:

5 **705.27 Ownership on death of owner.** On death of a sole owner or the last
6 to die of multiple owners, ownership of securities registered in beneficiary form
7 passes to the beneficiary or beneficiaries who survive all owners and to any
8 predeceased beneficiary's issue who would take under s. 854.06 (3). On proof of death
9 of all owners and compliance with any applicable requirements of the registering
10 entity, a security registered in beneficiary form may be reregistered in the name of
11 ~~the beneficiary or beneficiaries who survive the death of all owners~~ successors to the
12 ownership interest. Until division of the security after the death of all owners,
13 ~~multiple beneficiaries surviving the death of all owners~~ successors to the ownership
14 interest hold their interests as tenants in common. If no beneficiary or predeceased
15 beneficiary's issue who would take under s. 854.06 (3) survives the death of all
16 owners, the security belongs to the estate of the deceased sole owner or the estate of
17 the last to die of multiple owners.

18 **SECTION 41.** 766.31 (1) (title) of the statutes is created to read:

19 766.31 (1) (title) GENERAL.

20 **SECTION 42.** 766.31 (2) (title) of the statutes is created to read:

21 766.31 (2) (title) PRESUMPTION.

22 **SECTION 43.** 766.31 (3) of the statutes is renumbered 766.31 (3) (intro.) and
23 amended to read:

1 766.31 (3) SPOUSE'S INTEREST IN MARITAL PROPERTY. (intro.) Each spouse has a
2 present undivided one-half interest in each item of marital property, ~~but the subject~~
3 to all of the following:

4 (a) Terminable interest in deferred employment benefit plan. As provided in s.
5 766.62 (5), the marital property interest of the nonemployee spouse in a deferred
6 employment benefit plan or in assets in an individual retirement account that are
7 traceable to the rollover of a deferred employment benefit plan terminates at the
8 death of the nonemployee spouse if he or she predeceases the employee spouse.

9 **SECTION 44.** 766.31 (3) (b) of the statutes is created to read:

10 766.31 (3) (b) *Division based on aggregate value at death.* 1. Spouses may
11 provide in a marital property agreement that at the death of a spouse some or all of
12 their marital property will be divided based on aggregate value rather than divided
13 item by item. However, at the death of a spouse, a marital property agreement is not
14 necessary for a division of marital property that is not item by item.

15 2. The surviving spouse and the successor in interest to the decedent's share
16 of marital property may enter into an agreement providing that some or all of the
17 marital property in which each has an interest will be divided based on aggregate
18 value rather than divided item by item.

19 **SECTION 45.** 766.31 (4) (title) of the statutes is created to read:

20 766.31 (4) (title) CLASSIFICATION OF INCOME.

21 **SECTION 46.** 766.31 (5) (title) of the statutes is created to read:

22 766.31 (5) (title) TRANSFER TO A TRUST.

23 **SECTION 47.** 766.31 (6) (title) of the statutes is created to read:

24 766.31 (6) (title) PROPERTY OWNED AT DETERMINATION DATE.

1 **SECTION 48.** 766.31 (6) of the statutes is renumbered 766.31 (6) (a) and
2 amended to read:

3 766.31 (6) (a) *Date of marriage same as determination date.* Property owned
4 at a ~~If the date of marriage which occurs after 12:01 a.m. on January 1, 1986, is the~~
5 same as the determination date, the property owned at the determination date is
6 individual property of the owning spouse if, ~~at the marriage, both spouses are~~
7 ~~domiciled in this state.~~

8 **SECTION 49.** 766.31 (6) (b) of the statutes is created to read:

9 766.31 (6) (b) *Date of marriage prior to determination date.* If the date of
10 marriage precedes the determination date, the property owned at the determination
11 date is not classified by this chapter but is subject to all of the following:

12 1. Subsections (8) and (9) govern property owned at the time of marriage.

13 2. Subsections (8) and (9) govern property acquired while the spouses were
14 married but before the determination date if the property would have been
15 individual property had it been acquired after the determination date.

16 3. Subsections (8) and (9) and s. 861.02 govern property acquired while the
17 spouses were married but before the determination date if the property would have
18 been marital property had it been acquired after the determination date.

19 **SECTION 50.** 766.31 (7) (title) of the statutes is created to read:

20 766.31 (7) (title) INDIVIDUAL PROPERTY AFTER DETERMINATION DATE.

21 **SECTION 51.** 766.31 (7p) (title) of the statutes is created to read:

22 766.31 (7p) (title) UNILATERAL STATEMENT.

23 **SECTION 52.** 766.31 (8) (title) of the statutes is created to read:

24 766.31 (8) (title) RIGHTS IN PROPERTY ACQUIRED BEFORE DETERMINATION DATE.

25 **SECTION 53.** 766.31 (9) (title) of the statutes is created to read:

1 766.31 (9) (title) TREATMENT OF PROPERTY ACQUIRED BEFORE THE DETERMINATION
2 DATE.

3 **SECTION 54.** 766.31 (10) (title) of the statutes is created to read:

4 766.31 (10) (title) RECLASSIFICATION.

5 **SECTION 55.** 766.61 (7) of the statutes is amended to read:

6 766.61 (7) If Except as provided in s. 854.14 (3m) (b) 2., if a noninsured spouse
7 predeceases an insured spouse, the decedent spouse's marital property interest ~~of the~~
8 ~~decedent spouse~~ in a policy ~~which~~ that designates the surviving spouse as the owner
9 and insured is limited to a dollar amount equal to one-half of the marital property
10 interest in the interpolated terminal reserve and in the unused portion of the term
11 premium of the policy on the decedent spouse's date of death ~~of the deceased spouse~~.
12 All other rights of the decedent spouse in the ownership interest or proceeds of the
13 policy, other than the marital property interest described in this subsection,
14 terminate at the decedent spouse's death.

15 **SECTION 56.** 766.62 (2) of the statutes is amended to read:

16 766.62 (2) A deferred employment benefit attributable to employment of a
17 spouse occurring ~~while the spouse is married and~~ partly before and partly after the
18 determination date is mixed property. The marital property component of that mixed
19 property is the amount which results from multiplying the entire benefit by a
20 fraction, the numerator of which is the period of employment giving rise to the benefit
21 that occurred after the determination date and during marriage and the
22 denominator of which is the total period of employment giving rise to the benefit.

23 **SECTION 57.** 766.62 (4) of the statutes is renumbered 766.62 (4) (a).

24 **SECTION 58.** 766.62 (4) (b) of the statutes is created to read:

1 766.62 (4) (b) If a deferred employment benefit plan administrator has reason
2 to believe that a dispute exists as to the rights of parties, or their successors, to a
3 deferred employment benefit, the deferred employment benefit plan administrator
4 may do any of the following:

5 1. Deposit the benefit funds with a court having jurisdiction of the proceedings.
6 The court shall hold the funds and, upon determination of the owner, shall order
7 disbursement in accordance with the determination. Property deposited with the
8 court discharges the deferred employment benefit plan administrator from all claims
9 for the benefit funds.

10 2. Refuse to transfer any funds from the plan to any person until the
11 administrator receives from a court written documentation that the dispute has been
12 resolved.

13 3. Make a payment under par. (a).

14 **SECTION 59.** 766.62 (4) (c) of the statutes is created to read:

15 766.62 (4) (c) The protection afforded a deferred employment benefit plan
16 administrator under this subsection does not affect the rights of parties or their
17 successors in disputes concerning the beneficial ownership of deferred employment
18 benefits.

19 **SECTION 60.** 766.62 (5) (intro.) of the statutes is amended to read:

20 766.62 (5) (intro.) If Except as provided in s. 854.14 (3m) (c), if the nonemployee
21 spouse predeceases the employee spouse, the marital property interest of the
22 nonemployee spouse in all of the following terminates at the death of the
23 nonemployee spouse:

24 **SECTION 61.** 767.266 (1) (b) of the statutes is amended to read:

1 767.266 (1) (b) That one or both spouses will make a particular disposition in
2 a will or other governing instrument, as defined in s. 854.01 (2).

3 **SECTION 62.** 851.055 (1m) of the statutes is created to read:

4 851.055 (1m) Is not classified as individual property or marital property under
5 a valid marital property agreement, unless the marital property agreement provides
6 otherwise.

7 **SECTION 63.** 851.21 (1) (b) of the statutes is amended to read:

8 851.21 (1) (b) ~~A- Except as provided in s. 853.32 (2) (e), a~~ beneficiary named
9 in any document offered for probate as the will of the decedent and includes a person
10 named or acting as a trustee of any trust, inter vivos or testamentary, named as a
11 beneficiary.

12 **SECTION 64.** 851.31 of the statutes is amended to read:

13 **851.31 Will.** ~~“Will”~~ Unless the context or subject matter indicates otherwise,
14 “will” includes a codicil and any document incorporated by reference in a
15 testamentary document under s. 853.32 (1) or (2). “Will” does not include a copy,
16 unless the copy has been proven as a will under s. 856.17, but “will” does include a
17 properly executed duplicate original.

18 **SECTION 65.** 851.50 of the statutes is amended to read:

19 **851.50 Status of adopted persons.** The status of adopted persons for
20 purposes of inheritance and transfers under wills or other governing instruments,
21 as defined in s. 854.01 (2), is governed by ss. 854.20 and 854.21.

22 **SECTION 66.** 852.01 (1) (a) 2. of the statutes is renumbered 852.01 (1) (a) 2.
23 (intro.) and amended to read:

1 852.01 (1) (a) 2. (intro.) If there are surviving issue one or more of whom are
2 not issue of the surviving spouse, one-half of decedent's property other than the
3 following property:

4 a. The decedent's interest in marital property.

5 **SECTION 67.** 852.01 (1) (a) 2. b. of the statutes is created to read:

6 852.01 (1) (a) 2. b. The decedent's interest in property held equally and
7 exclusively with the surviving spouse as tenants in common.

8 **SECTION 68.** 852.01 (1) (b) of the statutes is amended to read:

9 852.01 (1) (b) To the issue, per stirpes, the share of the estate not passing to the
10 spouse under par. (a), or the entire estate if there is no surviving spouse. ~~If there are~~
11 ~~issue other than children, those of more remote degrees take per stirpes.~~

12 **SECTION 69.** 852.05 (title) of the statutes is amended to read:

13 **852.05 (title) Status of nonmarital child born to unmarried parents for**
14 **purposes of intestate succession.**

15 **SECTION 70.** 852.05 (1) (intro.) of the statutes is amended to read:

16 852.05 (1) (intro.) A ~~nonmarital~~ child born to unmarried parents, or the child's
17 ~~issue is entitled to take, is treated~~ in the same manner as a marital child by, or the
18 issue of a child, born to married parents with respect to intestate succession from and
19 through ~~his or her~~ the child's mother, and from and through ~~his or her~~ the child's
20 father if any of the following applies:

21 **SECTION 71.** 852.05 (2) of the statutes is amended to read:

22 852.05 (2) Property of a ~~nonmarital~~ child born to unmarried parents passes in
23 accordance with s. 852.01 except that the father or the father's kindred can inherit
24 only if the father has been adjudicated to be the father in a paternity proceeding
25 under ch. 767 or by final order or judgment of a court of competent jurisdiction in

1 another state or has been determined to be the father under s. 767.62 (1) or a
2 substantially similar law of another state.

3 **SECTION 72.** 852.05 (3) of the statutes is amended to read:

4 852.05 (3) (a) This section does not apply to a child who becomes a marital child
5 by the subsequent marriage of the child's parents under s. 767.60.

6 (b) The status of a ~~nonmarital~~ child born to unmarried parents who is legally
7 adopted is governed by s. 854.20.

8 **SECTION 73.** 852.12 of the statutes is amended to read:

9 **852.12 Debts to decedent.** If an heir owes a debt to the decedent, s. 854.12
10 governs the treatment of that debt ~~shall be charged against the intestate share of the~~
11 ~~debtor, regardless of whether the debt has been discharged in bankruptcy. If the~~
12 ~~debtor fails to survive the decedent, the debt shall not be taken into account in~~
13 ~~computing the intestate shares of the debtor's issue.~~

14 **SECTION 74.** 853.03 (2) of the statutes is renumbered 853.03 (2) (am) and
15 amended to read:

16 853.03 (2) (am) It must be signed by ~~2 or more witnesses, each of whom~~ at least
17 2 witnesses who signed within a reasonable time after witnessing any of the
18 following:

19 1. The signing of the will as provided under sub. (1), in the conscious presence
20 of the witness.

21 2. The testator's implicit or explicit acknowledgement of the testator's
22 signature on the will, ~~within~~ in the conscious presence of ~~each of the witnesses~~
23 witness.

24 3. The testator's implicit or explicit acknowledgement of the will, ~~within~~ in the
25 conscious presence of ~~each of the witnesses~~ witness.

1 **SECTION 75.** 853.03 (2) (bm) of the statutes is created to read:

2 853.03 (2) (bm) The 2 witnesses required under par. (am) may observe the
3 signing or acknowledgement under par. (am) 1. to 3. at different times.

4 **SECTION 76.** 853.04 (3) of the statutes is repealed and recreated to read:

5 853.04 (3) **EFFECT OF AFFIDAVIT.** The effect of an affidavit in substantially the
6 form under sub. (1) or (2) is as provided in s. 856.16.

7 **SECTION 77.** 853.11 (2) of the statutes is renumbered 853.12, and 853.12 (1), (2)
8 (intro.), (b) and (c), (3) (intro.) and (4) (intro.) and (b), as renumbered, are amended
9 to read:

10 853.12 (1) **ENTITLEMENT OF SURVIVING SPOUSE.** Subject to ~~par. (e)~~ sub. (3), if the
11 testator married the surviving spouse after the testator executed his or her will, the
12 surviving spouse is entitled to a share of the probate estate.

13 (2) **VALUE OF SHARE.** (intro.) The value of the share under ~~par. (a)~~ sub. (1) is the
14 value of the share that the surviving spouse would have received had the testator
15 died with an intestate estate equal to the value of the testator's net estate ~~of the~~
16 ~~decedent less, but the value of the net estate shall first be reduced by~~ the value of all
17 of the following:

18 (b) All devises to or for the benefit of the issue of a child described in ~~subd. 1.~~
19 par. (a).

20 (c) All devises that pass under s. 854.06, 854.07, 854.21, or 854.22 to or for the
21 benefit of children described in ~~subd. 1.~~ par. (a) or issue of those children.

22 (3) **EXCEPTIONS.** (intro.) ~~Paragraph (a)~~ Subsection (1) does not apply if any of
23 the following applies:

24 (4) **PRIORITY AND ABATEMENT.** (intro.) In satisfying the share provided by this
25 subsection section:

1 (b) Devises other than those described in ~~par. (b) 1. to 3.~~ sub. (2) (a) to (c) abate
2 as provided under s. 854.18.

3 **SECTION 78.** 853.11 (2m) of the statutes is created to read:

4 853.11 (2m) PREMARITAL WILL. Entitlements of a surviving spouse under a
5 decedent's will that was executed before marriage to the surviving spouse are
6 governed by s. 853.12.

7 **SECTION 79.** 853.11 (3) of the statutes is amended to read:

8 853.11 (3) ~~FORMER~~ TRANSFER TO FORMER SPOUSE. ~~The effect of a~~ A transfer under
9 a will to a former spouse is governed by s. 854.15.

10 **SECTION 80.** 853.11 (6) (c) of the statutes is amended to read:

11 853.11 (6) (c) If a subsequent will that wholly or partly revoked a previous will
12 is itself revoked by another, later will, the previous will or its revoked part remains
13 revoked, unless it or its revoked part is revived. The previous will or its revoked part
14 is revived to the extent that it appears from the terms of the later will, or from the
15 testator's contemporary or subsequent declarations, that the testator intended the
16 previous will or its revoked part to take effect.

17 **SECTION 81.** 853.11 (6) (d) of the statutes is amended to read:

18 853.11 (6) (d) In the absence of an original valid will, ~~establishment of the~~
19 execution and validity of the revived will or part ~~is governed by~~ may be established
20 as provided in s. 856.17.

21 **SECTION 82.** 853.18 (1) of the statutes is renumbered 853.18 (1) (intro.) and
22 amended to read:

23 853.18 (1) (intro.) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch.
24 766, no written designation in accordance with the terms of any insurance, annuity
25 or endowment contract, or in any agreement issued or entered into by an insurance

1 ~~company in connection therewith, supplemental thereto or in settlement thereof,~~
2 ~~and no written designation made under a contract, plan, system or trust providing~~
3 ~~for pension, retirement, deferred compensation, stock bonus, profit-sharing or death~~
4 ~~benefits, or an employment or commission contract, of any person to be a beneficiary,~~
5 ~~payee or owner of any right, title or interest thereunder upon the death of another,~~
6 ~~or any assignment of rights under any of the foregoing, none of the following is~~
7 ~~subject to or defeated or impaired by any statute or rule of law governing the transfer~~
8 ~~of property by will, gift, or intestacy, even though that the designation or assignment~~
9 ~~is revocable or the rights of that the beneficiary, payee, owner, or assignee are~~
10 ~~otherwise subject to defeasance;~~

11 **SECTION 83.** 853.18 (1) (a), (b) and (c) of the statutes are created to read:

12 853.18 (1) (a) A written designation in accordance with the terms of any
13 insurance, annuity, or endowment contract.

14 (b) Any agreement issued or entered into by an insurance company
15 supplemental to or in settlement of any insurance, annuity, or endowment contract.

16 (c) Any written designation made under a contract, plan, system, or trust
17 providing for pension, retirement, deferred compensation, stock bonus,
18 profit-sharing, or death benefits, or an employment or commission contract, of any
19 person to be a beneficiary, payee, or owner of any right, title, or interest thereunder
20 upon the death of another, or any assignment of rights under any of the foregoing.

21 **SECTION 84.** 853.32 (1) of the statutes is renumbered 853.32 (1) (am).

22 **SECTION 85.** 853.32 (1) (bm) of the statutes is created to read:

23 853.32 (1) (bm) A writing or document is incorporated into a will under par.
24 (am) even if the writing or document is not executed in compliance with s. 853.03 or
25 853.05.

1 **SECTION 86.** 853.32 (2) (a) of the statutes is amended to read:

2 853.32 (2) (a) A reference in a will ~~executed on or after May 3, 1996,~~ to another
3 document that lists tangible personal property not otherwise specifically disposed of
4 in the will disposes of that property if the other document describes the property and
5 the distributees with reasonable certainty and is signed and dated by the decedent.
6 The court may enforce a document that is not dated but that fulfills all of the other
7 requirements under this paragraph.

8 **SECTION 87.** 853.32 (2) (am) of the statutes is created to read:

9 853.32 (2) (am) Another document under par. (a) is valid if it was signed in
10 compliance with s. 853.03 (1) or with the law of the place where the document was
11 signed, or where the testator resided, was domiciled, or was a national at the time
12 the document was signed or at the time of death, even if it was not otherwise executed
13 in compliance with s. 853.03 (2) or 853.05.

14 **SECTION 88.** 853.32 (2) (b) of the statutes is renumbered 853.32 (2) (b) (intro.)
15 and amended to read:

16 853.32 (2) (b) (intro.) Another document under par. (a) is valid even if it any of
17 the following applies:

- 18 1. The document does not exist when the will is executed, ~~even if it.~~
19 2. The document is changed after the will is executed ~~and even if it.~~
20 3. The document has no significance except for its effect on the disposition of
21 property by the will.

22 **SECTION 89.** 854.01 of the statutes is renumbered 854.01 (intro.) and amended
23 to read:

24 **854.01 Definition Definitions.** (intro.) In this chapter, ~~“governing:~~

1 (2) “Governing instrument” means a will; a deed; a trust instrument; an
2 insurance or annuity policy; a contract; a pension, profit-sharing, retirement, or
3 similar benefit plan; a marital property agreement under s. 766.58 (3) (f); a
4 beneficiary designation under s. 40.02 (8) (a); an instrument under ch. 705; an
5 instrument that creates or exercises a power of appointment; or any other
6 dispositive, appointive, or nominative instrument that transfers property at death.

7 **SECTION 90.** 854.01 (1) of the statutes is created to read:

8 854.01 (1) “Extrinsic evidence” means evidence that would be inadmissible
9 under the common law parol evidence rule or a similar doctrine because the evidence
10 is not contained in the governing instrument to which it relates.

11 **SECTION 91.** 854.03 (2) (b) of the statutes is amended to read:

12 854.03 (2) (b) Except as provided in sub. (5), if property is transferred under
13 a governing instrument that establishes 2 or more co-owners with right of
14 survivorship, and if it is not established that at least one of the co-owners survived
15 did not survive the others by at least 120 hours, the property is transferred to the
16 co-owners in proportion to their ownership interests.

17 **SECTION 92.** 854.03 (5) of the statutes is renumbered 854.03 (5) (am), and
18 854.03 (5) (am) 4., as renumbered, is amended to read:

19 854.03 (5) (am) 4. The imposition of a 120-hour survival requirement would
20 cause a nonvested property interest or a power of appointment to fail to be valid, or
21 to be invalidated, under s. 700.16 or under the rule against perpetuities of the
22 applicable jurisdiction.

23 **SECTION 93.** 854.03 (5) (am) 7. of the statutes is created to read:

24 854.03 (5) (am) 7. The statute or governing instrument specifies that this
25 statute, or one similar to it, does not apply.